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IN THE
COURT OF APPEALS OF INDIANA

RONNIE Q. HENDERSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0708-CR-399
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George Biddlecome, Judge
Cause No. 20D03-0103-CF-24

March 7, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Ronnie Q. Henderson appeals the trial court's order finding that he had violated the terms of his probation and ordering Henderson to serve the balance of the originally imposed sentence. Henderson contends that the trial court erroneously relied upon a conviction that rests on evidence that should have been suppressed. Finding that Henderson has waived this argument by failing to raise it at the probation violation hearing, we affirm.

FACTS

On June 8, 2001, Henderson pleaded guilty to class B felony delivery of cocaine under cause number 20D03-0103-CF-024 (CF-24). The trial court initially imposed a sentence of twenty years imprisonment but on June 19, 2003, modified the sentence by suspending ten years and ordering that Henderson serve ten years on probation. Henderson was released from the Department of Correction in December 2005.

On April 22, 2006, Elkhart County Sheriff's Deputy Michael Wass was stopped at a traffic light and noticed Henderson, who was driving a nearby vehicle. After the deputy observed that Henderson's vehicle had a cracked windshield and a broken taillight, he initiated a traffic stop. Henderson immediately jumped out of the vehicle and made a "tossing motion." Tr. p. 12. The deputy ordered Henderson to get back inside his vehicle and asked for his driver's license and registration. Henderson informed Deputy Wass that his license was suspended, which the deputy confirmed to be true. The deputy arrested Henderson for driving with a suspended license and searched Henderson's vehicle, finding cocaine and marijuana inside.

On April 24, 2006, the State charged Henderson with class A felony possession of cocaine and class D felony possession of thirty or more grams of marijuana under cause number 20D03-0604-FA-14 (FA-14). On May 1, 2006, the probation department filed a violation of probation petition under cause number CF-24. On April 4, 2007, a jury found Henderson guilty as charged under cause number FA-14.

A probation revocation hearing was held under cause number CF-24 on June 28, 2007. Deputy Wass and Henderson's probation officer testified during the hearing, and at its conclusion, the trial court found that Henderson had violated the terms of his probation by committing the crimes for which he was convicted in cause number FA-14. The trial court revoked Henderson's probation and ordered him to serve the balance of the originally imposed sentence. Henderson now appeals the revocation of his probation.[1]

DISCUSSION AND DECISION

A probation revocation hearing is akin to a civil proceeding, so an alleged violation of probation need be proved only by a preponderance of the evidence. Lightcap v. State, 863 N.E.2d 907, 911 (Ind. Ct. App. 2007). Revocation is appropriate if there is substantial evidence of probative value supporting the trial court's decision that the probationer is guilty of any violation. Id.

Henderson's sole argument on appeal is that the evidence that was found in his vehicle should have been suppressed at his trial in cause number FA-14. This argument

[1] Henderson has also filed a separate appeal regarding his convictions from cause number FA-14. That appeal is currently pending.

is essentially a collateral attack on those convictions. Henderson, however, failed to raise this argument at his probation revocation hearing. He did not object to the deputy's testimony at the revocation hearing regarding the drugs that were found in the van or to the testimony that Henderson admitted that his license was suspended. Tr. p. 15-20. He has, therefore, waived this claim on appeal. Purifoy v. State, 821 N.E.2d 409, 412-13 (Ind. Ct. App. 2005) (holding that parties are required to voice objections in a timely fashion so that harmful error may be avoided or corrected and so that the party seeking to introduce the evidence has an opportunity to present foundational evidence); Wise v. State, 719 N.E.2d 1192, 1197 (Ind. 1999) (holding that because the defendant did not object to the disputed testimony when it was offered, any claim of error was waived).

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.